AMARAVATHY v. ABDULLAH

[A. C. J. (Adams J.) August 25, 1960]

[J. B. — Civil Suit No. 11 of 1960]

Civil Law Ordinance, 1956, s.7(5) — "Not more than one action shall be brought" — Meaning of.

The wording of section 7(5) of the Civil Law Ordinance, 1956 "not more than one action shall be brought . . . . . ." mean that not more than one action may be brought to the final finding or award, and the subsection would not bar further proceedings brought where the previous action had been discontinued under R.S.C. O. 26 as a result of technical difficulties, as in this case, because there has been no finding on the issue of negligence nor has there been a final award.

ACTION FOR DAMAGES.

J. P. L. Harris for the plaintiff.

Denis Murphy for the defendant.

Cur. Adv. Vult.

Adams J.: This is an action by the Administratrix of the estate of S. Narayanasamy Naidu against Abdullah bin Haji Shukor for damages under sections 7 and 8 of the Civil Law Ordinance, 1956, resultant upon the running down and killing of the deceased by the defendant at about the 11th mile, Jalan Scudai, on the 16th December, 1957.

Paragraph 6 of the Defence pleaded that the claim for dependancy is barred under section 7(5) of the Civil Law by virtue of the fact that a claim had already been made on behalf of the dependants in Civil Suit No. 85 of 1958 which has been discontinued.

At the end of the evidence I said that I was satisfied that the deceased had died as a result of a negligent act of the defendant but that I would like to have time to consider the arguments put forward by Mr. Harris for the plaintiff and Mr. Murphy for the defendant on the question of whether or not proceedings could be brought under the provisions of section 7 in view of the circumstances of the case.

What had happened was this. At the time of the death of the deceased the only persons interested in his estate were his two daughters, N. Samy Krishna Ammal who resided in Singapore, and N. Amaravathy, who at the material time was a rubber tapper on Shansi Estate, Johore. On the death of the deceased, N. Samy Krishna Ammal, being the elder daughter, consulted Solicitors in Singapore and proceedings were commenced under section 7. Letters of Administration to the deceased's estate were not taken out because Samy Krishna Ammal resided in Singapore and was not able to find the necessary sureties for the Administratrix's Bond. There was of course no claim under section 8 for the same reason. Accordingly the proceedings were discontinued and Letters of Administration were granted to her sister Amaravathy residing in the Federation. Amaravathy brings the present action on behalf of herself and her sister.

Mr. Harris argued that he can bring this action in spite of the previous action which was discontinued because the words "not more than one action shall be brought" means in effect "brought to conclusion". He pointed out that the Fatal Accidents Act of 1846 reads "only one action shall lie" and the commentary states that this must necessarily mean that only one action can be brought and one award made. Mr. Harris argued that sub-sections (1) and (2) say nothing about one person bringing an action and subsection 8 says that "every action so to be brought shall be . . . ." which, he argued, meant that the Parliament envisaged the bringing of more than one action but, if that did happen, there would have to be consolidation so that there would only be one award.

Mr. Murphy in reply argued that the words "to bring an action" must necessarily mean "to commence an action". He cited *Halsbury*, 3rd Edn., Vol. 28, page 39 and pointed out that the subject matter of this action was identical with the subject matter in the action which was discontinued. Mr. Harris replied that these words must mean effectually brought, namely that the action must be brought to conclusion by trial. Although he did not rely on this, the general rule under O. 26 is to enable an action to be restored on terms. He pointed out that it would be manifestly hard if an action was brought and then technical difficulties arose which it was not possible to cure by amendment, as in this case, and a fresh action was held to be barred by the provisions of sub-section (5).

There is no authority on this matter. I think that Mr. Harris's argument must be the correct one. Section 7(1) makes the person guilty of the act, neglect, or default by which the death was caused liable to an action for damages for his tortious act. Section 7(2) lays down the class of persons for whom the benefit of the action shall be, and section 7(3) and (4) deal with damages and how they are to be distributed. It stands to reason from the wording of section 7(2) that since every action must be for the benefit of wife, husband, parent and children they alone can claim. Since the subject matter of the complaint is the same, to bring more than one action for or in respect of the same subject matter would be unnecessary. Section 7(7) provides that the writ shall give full particulars of the persons on whose behalf the action is brought. Since the executor or administrator of the estate brings the action, he would set out all those who had suffered pecuniary loss as a result of the defendant's tortious act. It is therefore unnecessary and undesirable for there to be more than one action. The provisions contained in section 7(5) therefore are designed to prevent a multiplicity of actions since all the persons named in section 7(2) have the same interest. If a wrongful act, neglect, or default is not established their claim fails. If it is established then their claim succeeds and the Court awards damages and apportions them as it deems it just on the evidence. I think that the wording of section 7(5) therefore must mean that not more than one action may be brought to the final finding or

award, and the sub-section would not bar further proceedings brought where the previous action had been discontinued under O. 26 as a result of technical difficulties, as in this case, because there has been no finding on the issue of negligence nor has there been a final award.

In so far as the question of damages is concerned, it now transpires that the plaintiff said her deceased father had been giving her $50 a month as she was a widow with one child to support, and her sister said that the deceased had been giving her $20 a month regularly as she had children and her husband, who was working as an hospital attendant, but she was, at the time of the deceased's death, not working. The deceased was a rubber tapper and was stated to be earning $84 p.m. which figure was admitted by the Defence. He was stated to have no other dependants whatsoever. It was also stated that he had outside earnings of between $60 and $90 p.m. from the sale of pea-nuts. It was established that he had about six years of working life left. Accepting the figure of $70 as the amount received monthly by the two daughters, the deceased was contributing to them at the rate of $840 a year. The capital sum to produce this for six years at 5 per cent per annum would be $4,267 which I award as General Damages. There will be also an award of $220 as Special Damages, as agreed, for funeral expenses. For loss under section 8, as the deceased was reaching the end of his working life, I propose to award a sum of $2,500.

Mr. Harris applied for the cost of obtaining Letters of Administration, that is to say, $350 to be deducted from the sum of $2,500 awarded under section 8 before that sum is deducted from the award made under section 7. I agreed to this course.

There will therefore be an award under section 7 of $2,117 and under section 8 in respect of loss to the estate of $2,500, and Special Damages of $220 for funeral expenses. The proportions in which the two dependants should share damages are five-sevenths for the plaintiff and two-sevenths for N. Samy Krishna Ammal.

The defendant will pay costs.

Stay of execution for 14 days or, on the filing of the notice of appeal, until the determination of the appeal.

Order accordingly.

Solicitors: *Braddell Bros.; Murphy & Dunbar.*

SOON PENG SIONG v. SIN YUH MIAW

[A. C. J. (Chua J.) September 15, 1960]

[Singapore — District Court Appeal No. 5 of 1960]

Workmen's Compensation — Injury suffered in course of dismantling vessel for scrap iron dealer — Whether work undertaken in course of or for the purpose of trade or business of principal — Liability to pay compensation — Workmen's Compensation Ordinance (Cap. 157), s.19(1) — Application of.

In order that section 19(1) of the Workmen's Compensation Ordinance shall apply there must first be work undertaken by the principal; secondly, the work must be in the course of, or for the purpose of his trade or business; and, thirdly, he must contract with another person for the execution of the whole, or some part, of the work. Whether the work is undertaken by the principal is in each case a question of fact.

Case referred to:—

(1) *Hockley* v. *West London Timber & Joinery Co.* [1914] 3 K.B. 1013.

APPEAL from Workmen's Compensation Arbitration.

Po Guan Hock for the appellant.

Tan Boon Teik (Director of Legal Aid) for the respondent.

Chua J.: This is an appeal from a decision of the Workmen's Compensation Arbitrator holding that the respondent in this appeal, Sin Yuh Miaw, is entitled to compensation from the appellant, Soon Peng Siong, under section 19(1) of the Workmen's Compensation Ordinance (Cap. 157).

The material facts are as follows. The appellant is the managing proprietor of Chop Siong Huat. By an agreement dated the 12th September, 1958, made between Pearl Salvaging Co. (the Vendors) and Chop Siong Huat (the Purchasers) it was agreed that "the Vendors will sell to the Purchasers the front bow of the vessel 'Shieretoko Maru' (hereinafter called the 'vessel') comprising of four of the five hatches of the whole vessel, ... for dismantling under the following terms and conditions." It is unnecessary to set out all the terms and conditions. Clause 1 provides: "The Purchasers will undertake to completely dismantle the vessel and purchase from the Vendors whatever metals dismantled from the vessel . . . . at the following prices:— . . . . " Clause 2 provides: "All expenses in connection with the dismantling will be for the Purchasers' account." Clause 3 stipulates that an advance payment of $150,000 for the purchase of metals dismantled should be made by the Purchasers. Clause 4 provides for the Purchasers to make further payment to cover the cost of the metals taken by the Purchasers and "the amounts of further payments will be based on the quantity of the goods yet to be delivered and dismantled". Clause 6 provides that should the quantity of the scrap from the vessel fail to reach 3,000 tons, after the vessel has been completely dismantled, the Vendors agree to supply whatever quantity is short to make up the 3,000 tons. By an agreement dated the 16th September, 1958, made between one Ang Geok Ho and Chop Siong Huat, Ang Geok Ho undertook to dismantle and cut up the vessel "Shiretoko Maru", the same vessel referred to in the agreement dated the 12th September, 1958, between Pearl Salvaging Co. and Chop Siong Huat. Ang Geok Ho engaged workmen for the work and one of them was the respondent. In the course of the dismantling and cutting up of the vessel the respondent was injured in the eye.